Minutes
City of Newport Planning Commission Regular Session
Tuesday, May 29, 2012

Commissioners Present: Jim Patrick, Mark Fisher, Glen Small, Rod Croteau, Gary East, and Jim McIntyre.

Commissioners Absent: Melanie Sarazin *(excused).*

City Staff Present: Planner/Code Administrator Victor Mettle and Executive Assistant Wanda Haney.

A. Roll Call. Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m. On roll call, McIntyre, Small, Croteau, Patrick, Fisher, and East were present. Sarazin was absent, but excused.

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of May 14, 2012.

MOTION was made by Commissioner Fisher, seconded by Commissioner East, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. Citizen/Public Comment. No comments on non-agenda items.

D. Consent Calendar. Nothing on the Consent Calendar.

E. Public Hearings.

Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, bias, ex parte contact, or site visits. Fisher, Croteau, Small, and Patrick declared site visits to both locations; McIntyre and East made site visits to the 12th Street location. Patrick called for objections to any of the Planning Commissioners or the Commission as a whole hearing these matters; and no objections were raised.

1. Continued Hearing on File No. 2-ADJ-12. A request submitted by Murray M. & Nancy K. Tilson for approval of an adjustment to Section 2-3-2.005/"Required Yards" of the Newport Zoning Ordinance (NZO) (No. 1308, as amended) to allow replacement of an existing deck with expansion into the 15-foot rear yard setback required in the R-1 district. The proposed deck would have a distance of about 7.82 feet at the narrowest point. NZO Section 2-3-2.025(B)(2) allows up to a 2-foot projection into a yard setback; therefore the request would result in a setback of 9.75 feet (a 35% adjustment). The subject property is located at 136 SE Larch St (Assessor's Map 11-11-09-BA, Tax Lot 4700). The hearing on this matter was opened on April 23, 2012; and, at the applicant's request, continued to tonight.

Patrick opened the hearing for File No. 2-ADJ-12 at 7:04 p.m. by reading the summary of the file from the agenda. He called for the staff report. Mettle noted that the criteria for approving an adjustment are found in NZO Section 2-5-2.025 and are contained in the staff report. Mettle said that this is a straight-forward request. He explained that the applicant proposed to replace an existing deck that needs some repair. The new deck would encroach into the required 15-foot rear yard setback by about 5 ¼ feet. He noted that the staff report contains a site survey and shows the existing and proposed structures on the property. All affected property owners with 200 feet were notified. At first we received the same letter from two of the adjoining property owners expressing opposition to the request; but we later received another same letter from the same property owners, and this time they were in support of the request. Copies of the letters and other materials related to this request are contained in the staff report.

Proponents: The applicant, Nancy Tilson, came forward to explain her request further. Tilson noted that they need to replace the deck because some of the boards are rotting. She said they thought that they would extend the deck just a little bit in order to have a little more room. She said that just on the other side is a very tall cedar hedge that separates them from the neighbors on that side. Both neighbors on that side are the ones that submitted letters of concern. She said the reason for their initial letters was because they hadn't contacted those neighbors directly, so they didn't understand the request. As soon as the Tilsons showed their plan to those neighbors, they didn't have an issue. Croteau asked for confirmation that this is a second-story deck, and those cedars are fairly tall. Tilson explained that those are between them and their neighbor, Charles Bode. She said since they bought the place, they have probably grown five or six feet taller, and they can't see Mr. Bode's place at all. With the other neighbor, Rhonda Hamstreet, they have an agreement that that hedge is cut shorter; so they can see each other. She said that the cedars are on the property line as far as they can tell. To get an understanding, McIntyre asked that the original deck is also an

upper deck and extends across the house. He said that in looking at the site plan, the house is askew on the lot, and the distance from the property line looks like it is almost the same at the narrowest point as the proposed addition. He asked if it doesn't already encroach into the setback line. Tilson confirmed that and said that they have only been there a year, and it is their understanding that their home was the first one in that area. The deck was put on as soon as the house was built. There were no other proponents present wishing to testify.

Opponents or Interested Parties: There were no opponents or interested parties present wishing to testify; so the applicant waived rebuttal.

Patrick closed the public hearing at 7:10 p.m. for deliberation. East said that looking at the layout and the lot lines, he doesn't think it will encroach any more than the other deck. It is a second-story deck, so he doesn't really have any objections to the adjustment. And since the neighbors that are immediately affected by this don't have objections, he has no problem with doing it. Fisher concurred. Croteau said that the criteria are met, so he has no problem with the adjustment. Small said that if this were a ground-level deck, he would have no objections. His concern is that this is an upper deck and that affects site lines; but because the neighbors said they are okay with it that alleviates his concern. He noted that the encroachment isn't any greater than the existing deck; so he has no problem with it. McIntyre thought it was pretty straight-forward. He noted that the original deck extended into the setback line, and the new deck doesn't appear to extend any farther than the original deck. He didn't see any reason to object to it. He thinks it is a good idea. Patrick felt the same way. He noted that they have almost eight feet of room, and the standard setback is ten feet. He said he is perfectly happy with it.

MOTION was made by Commissioner Croteau, seconded by Commissioner McIntyre, to approve the adjustment in File 2-ADJ-12 with the conditions indicated in the staff report. The motion carried unanimously in a voice vote.

2. File No. 1-VAR-12. A request submitted by Vern & Paulette Bartley for approval of a variance to Section 2-3-2.015/ "Garage Setback" and Section 2-3-2.005/"Required Yards" of the Newport Zoning Ordinance (NZO) (No. 1308, as amended) to allow construction of a proposed two-story two-car garage with a "0" setback at 845 SW 12th Street (Assessor's Map 11-11-08-CA, Tax Lot 8301).

Patrick opened the public hearing for File No. 1-VAR-12 at 7:12 p.m. by reading the summary of the file from the agenda. He called for the staff report. Mettle noted that the criteria for approval of a variance are found in NZO Section 2-5-2.030(A), and the staff report addresses each of these criteria. Mettle said this is another straight-forward request. The applicants are proposing to build a 2-story garage with "0" setback. He noted that the ordinance requires a garage entrance to be set back 20 feet. However, on this property, a portion of the back yard slopes off drastically. This has necessitated the applicant to seek a variance. Mettle said that it appears that the only area to do any kind of development would be toward the front because of the topography and existing structures. He noted that all affected properties were notified, and we received three letters. All of those came from immediate neighbors and were in support of the request. Croteau asked if there would be any potential sidewalk issues in this neighborhood. Mettle said that he didn't believe so because of the uniqueness of this neighborhood. He noted that because of the topography, the majority of properties have built closer to the road than normal. It is just practical because those are the only places they can build on. Mettle said that the Public Works Department was notified, and we received no comment from them. McIntyre recalled that the Commission had recently reviewed this street as far as public right-of-way and had discussed that a number of these properties are very close to their property lines. In fact, one has a garage that extends into the public right-of-way. He thought this could create a problem in the future if it became necessary to improve this street. If this property owner is right up to the property line, the street could potentially be right up to the edge of the garage. He said that is his concern. Mettle noted that with this property, the existing driveway encroaches into the right-of-way. He thought the fact that we didn't receive any comment from Public Works would indicate that they don't have any concerns with that. He noted that a request for an encroachment permit for a similar situation was recently granted; and there has been a history of that in terms of encroachments being permitted by the City. He said that, here again, we normally notify the Public Works about any potential for that kind of concern, and we didn't get any comments back from them. Fisher said that 12th Street shows a 60-foot street, and there is no residential street in Newport that is 60 feet. He doesn't see building to this property line as a problem. He said no street there is ever going to be 60 feet wide. He said if a sidewalk were put in, it would probably be on the other side. McIntyre noted that the street is not improved at this time. If at some time the City wishes to improve that street, we have a potential problem. Fisher said that the City doesn't take more of the property from the homeowners. If it were built up to the property line, he didn't see that as a problem. Patrick said his concern is that the City has requirements for curb cuts, which are only 20 feet. He thought the Commission had better grant a variance for the curb cut also because the applicant might end up with a curb they would have to drive over. Mettle noted that the curb cut is more of a ministerial action handled through the Public Works Department, which requires them to build to certain standards reviewed on a case by case basis. He said generally Public Works would take care of that. McIntyre wanted clarification on the front elevation in Attachment A-3 showing a standard size garage door and an RV door while Attachment A-5 shows a front elevation with two standard car doors. East said that last time the Commission looked at this street, they had a question about granting encroachments but the owners would have to understand that there is a possible utility easement that they may be encroaching into. Mettle said that we also notified the other utility companies, and we didn't get anything back from them either. He added that in terms of an encroachment, even if the City were to give them an encroachment permit, there is the understanding and it is recorded that any time the City needs to

develop that property, it is the property owner's risk. As long as the City doesn't do anything there, the property owner can keep it for their use. Patrick recalled that it was a street vacation that the Commission had reviewed, and they didn't want to vacate a street that had utilities in it.

(Because of a conflict with another event, Commissioner Fisher was excused and left the meeting at 7:22 p.m.)

Proponents: Vern Bartley, the applicant, came forward to support his request. First Bartley addressed McIntyre's question about the two different elevations. He said the drawing in A-5 was to show what the architectural style was to look like, not the actual height of the doors as shown in A-3. Bartley said they have owned the home for ten years and have known that they wanted to add a garage. Initially when they got ready to plan it, they looked at the neighbor's garage and measured the front of the garage assuming that was the property line. That is the garage that came up in the street vacation application last year. Once the survey was done as part of this process, they realized their property didn't go where they thought it did. That is when they decided to approach the City for a "0" setback. Bartley said there is an RV bay in this facility reflected in the elevations shown in Attachment A-3. It is designed around that. He said they are limited by the topography on the east side of their property. If they stay back the full 20 feet, the garage would be only 11 feet deep. Their intent is to get cars off the street and out of the weather in a manner that is consistent with the neighborhood, adds value, and is complementary to the City and the street they are on. McIntyre asked if he is planning on retaining the original garage and end up with a 3-car garage. Bartley said yes, but the garage they intend to leave is barley large enough for him to put his Jeep in. Croteau said that on the application he noticed that Bartley is listed as the applicant and not the owner. Bartley explained that they have a family trust, Yeltrab Family LLC (Bartley backwards); and they purchased the property via that family trust.

Bill Lalack, a neighbor at 811 SW 12th, testified as a proponent. Lalack noted that they own properties at 801 and 811 SW 12th Street, abutting the applicant's property. Lalack said that he wrote a letter to the Planning Commission. His letter explained that they came up with the same issue in 2006, and the Planning Commission granted them a "0" setback. His letter asks why the Bartleys shouldn't have the same option. He said building up to the right-of-way isn't going to interfere with anything. Lalack reminded that the Planning Commission also approved the request for street vacation; it was at the City Council that it was shot down. There were no other proponents present wishing to testify.

Opponents and Interested Parties: There were no opponents or interested parties present wishing to testify; so the applicant waived rebuttal.

Patrick closed the public hearing for File No. 1-VAR-12 at 7:31 p.m. for deliberation. McIntyre said that in today's world, the way the street is designed and laid out, there is plenty of room. Because adjacent properties have been allowed by the City Planning Commission and the Building Department in the past to build up to the property line, he doesn't have an objection to it. He doesn't see penalizing this property owner just because he feels strongly about something that could potentially happen in the future. However, he said the Commission may be pointed out in the future as being not very bright and allowing this to happen when the City some day in the future says they need to widen the street and put in curb and gutters. Nevertheless, he thought the Commission should allow the variance. Small agreed. He said in that perfect world, the lot would have been large enough to build with the setbacks. He said this likely was platted on a map in a room somewhere with them having no idea that a large bluff was part of this area. That creates a hindrance and affects this property owner differently than it does across the street. He noted that other owners have built to the property line, and it would be an undue restriction to say they can't do that here. Small said that he understands the code and the reason for that setback, but sometimes common sense is better than what the paper says; and this is one of those cases. Croteau was supportive. He said there are already similar situations in the neighborhood. He noted that it is a large structure that would be fronting the street; and he hopes it is finished in keeping with the character of the neighborhood. East concurred. For clarification, McIntyre wanted to add that in reading the proposal he noticed that it said the property had been originally surveyed, and the property owners were aware of the slope when they bought the property. Just because the property is on a slope and you can't build any more than what is already there and can't build over the slope, is not an excuse in his opinion for designing something and coming in with the expectation of getting a release from the duty to build to code. But in this case, because it has been done before and adjacent properties are built to property lines, he believes it should be allowed. McIntyre said you should be aware of what you can build on your property when you buy it. Patrick noted that the majority of variances given have been based around topography. He said they knew what it looked like, but we have a lot of nonconforming houses in Newport because the code came about after they were built. We also have provisions allowing us to look at street and vary setbacks according to what is built on that street. This is an application to do that. Although we typically don't allow "0" setback, this is a special case. There is a really bad bank in this case that we wouldn't want them to build on. He noted that that street serves very little area and will never be built to full city standards. He said that we allowed narrow streets in Wilder for example where 30 feet is serving more houses than here. He said he is not too concerned about that. In general, he is in favor of that. He said this is just a special part of Newport that has difficulties.

MOTION was made by Commissioner McIntyre, seconded by Commissioner Croteau, to approve File No. 1-VAR-12 with staff-recommended conditions of approval. The motion carried unanimously in a voice vote.

F. <u>New Business</u>.

1. Presentation and discussion by Diane Henkels and Mark Saelens regarding placement of wind turbine devices for potential public wind energy facility on the Thompson Sanitary property. Henkels said they were attending the meeting to discuss a proposal to evaluate wind resources on property located in the city limits. They are hoping that information acquired from this effort will give an indication if that would be a good alternative for a community wind project. Henkels introduced herself and gave her background. She is a practicing attorney, has worked for the Department of Energy, and five years ago took a job practicing Indian law. While at the Oregon Department of Energy, she became aware of resources for the potential of generating wind energy. Since she knew the coast, she kept an eye on it. Saelens introduced himself and gave his background. He was a fisheries biologist for ODFW. In 2007 he went to work for Lincoln County as the solid waste program manager. That fall, the County also made him the sustainability coordinator. Saelens said he and Henkels both have some recent background with renewable energy. He said his science background plugs into this.

Saelens noted that there is very little information about wind along the coast. That is also what is driving what they are presenting tonight. Henkels said they could have provided any amount of information this evening, but they prepared a packet that they hope to be a good summary of the topic. Included is information on a tool that is used to measure wind resources, which is a building block you have to have before you can have any project at all. There is a sheet about where this has been done elsewhere. Henkels said that she is familiar with different renewable energy projects throughout the state, and she had an opportunity to learn more about one on the Washington coast in Grayland, Washington. The handout regarding Triton Sonic Wind Profiler is a tool that would make a good fit for a first go at site-specific wind gathering. She noted that the unit actually fits in the back of a pickup. She said this is really a first step as far as obtaining information. The idea is that this would enable us to learn enough in three months to tell whether seeking to install an anemometer to gather bankable data would be a worthwhile step. Saelens said that Henkels' firm provided a trip up to the Washington community wind energy site. That was the first chance to see what it really looked like. There is the potential for a site as an educational opportunity. They spent some time visiting and processing sites. They actually brought Trace Megenbier of the Oregon Department of Energy with them. From that they got a better sense which sites were potentially suitable for a commercial facility versus small projects. This idea of SoDAR came on board at this time. It involves a series of sound waves shooting up into the atmosphere to identify and range noise from the wind and turn it into a map to show what the resources look like. The idea is that SoDAR technology is good enough to give a snapshot in time to tell us whether it is worthy to go forward with a tower. The other unique opportunity that they were able to pair up with what turned out to be one of the leaders of this technology (Triton) strengthened the request. Henkels said that nowhere along the coast do we have actual wind data collected, and that is what they are trying to do. She said that will be their first step.

Henkels said that among other sites they visited, the Thompson Sanitary site came up. Part of that property is owned by Thompson and part by the City. She said when they looked at it there were a number of factors that checked out and there seems to be wind resource there. Also, it seemed the kind of site they are looking for as far as position; it's not a headland and not a beach. It is near a parcel of land that might be considered as value added feature. She said their vision here is to use a site as a process to evaluate it as a wind resource on the central Oregon coast. They hope to do a feasibility study that will give data for the community to decide if there is interest in going further. Other possible sites are in Waldport near the new high school, up by Taft high school in Lincoln City, the OCCC campus, and the fairgrounds. For this one, Thompsons is interested. Thompsons explored this themselves years ago. Because this could be a public/private sector effort, it is interesting. She said that is why they started with this one.

Patrick asked how long the profiler would be there. They said it depends on how much data is needed and how much they can afford. The scenario is that it will be set up for 3-4 months to collect and analyze data. From that they will know more than they did and then can determine if it is an appropriate site, if they need more SoDAR, or have learned enough to know that this site might not be what they thought and they should move the equipment. Some places will probably take between 3-6 months to determine whether in fact it is worth the additional investment of putting up towers. The profiler is a less-expensive prospecting tool. The profiler costs around $2500 per month, while a tower costs $12,000-$20,000 per time it is put up or taken down. There are a lot of operations going on in Oregon already; but there have been inquiries from large companies about wind resources along the Oregon coast. The turbines would be commercial grade but sized to benefit the community immediately.

McIntyre said he has heard a lot of comment regarding noise from wind turbines. He wondered if this is a pre-study to setting up wind turbines in this area; and, if so, how many would be established in that area. That is his main concern. Henkels said if it is not a good fit, then it's not. She said there is only one way to find out. This Commission would have a great deal to say about this. She included a link to an update to a study that Oregon did, and she recommends the Commissioners pay attention to that draft study that was produced by Oregon Public Health. She said it is a good compilation of information. She said the report came out, although it is still inconclusive, that the results are finding that there doesn't seem to be much impact. McIntyre said a lot of new homes are proposed in that general area, and several were recently built on the hillside just to the south of that area. He said the studies he has seen in the past and comments on these large developments of wind turbines is that they create a lot of noise; and not only that, they are not very beautiful to look at. He said the project with the unit Henkels and Saelens are proposing, he is all in favor of. He thought it was a good way to get started. But he added that they would probably run into resistance when they start talking about 60-80 foot towers with wind turbines on them. Henkels said they would want that

question well vetted in the public sector. She said it is still a work in progress of learning what the issues are. She said that studies have shown that if the neighbors are benefiting from the turbines, then they are more in favor. It is an issue they would continue to have to traverse as they go through the process. Saelens said that sound is one of those things that increases as numbers increase. That is part of what goes on with wind farms where there are dozens of these large machines in a small area. While he can't say what this project would look like, he would be amazed if we got two or three on a site. Basically, the target is one turbine. He said another thing is the Thompson Sanitary site is not a place where a lot of homes will develop; which maybe can help guard against problems in the future. When it gets to that step, they would want all neighbors on board.

Small wondered if they are looking at 3-4 months for the wind profiler, which months those might be. Saelens said ideally they would have liked to have something out there already. One thing they test for is what happens when they will get the northwest winds. April and May would be a good time to measure. Not necessarily the stormiest part of winter. In springtime there are more steady winds but lower. In fall there are some higher winds, but in patches. That would be a good cross section. One way would be to have a couple of seasons of SoDAR. Henkels said how they envision this is to have different installments of measuring. They would not be analyzing the data themselves; another company would. The data collected from this instrument would be correlated with existing data. If data has been collected for three months and is consistent with data that is around it, then you can more easily make the decision that based on this correlation if a met tower is installed, we will have consistent results. Existing data will be used as well.

Small asked, in a best case scenario, if they put a profiler in, gather data, and that correlates to a tower going up, what kind of timeframe they might be looking at from first steps to generating power through wind energy. Henkels said there are a lot of fragile resources here to consider. They have to look at wildlife issues, do fatal flaw analyses, and address concerns of the community. She said, assuming all those go fine, it really then depends on how quickly people want to act and how financing goes. She hears of projects happening within a year or two. Data collection can take a year. She noted that even the Grayland, Washington project took ten years. Henkels and Saelens said their efforts are getting into their second or third year. Some will depend on the economy.
Croteau asked how long the Grayland facility has been operational. Henkels said almost two years. Croteau asked if that is good enough for a look back at economic analysis. Henkels said that Grayland's revenue was $500,000 per year for four turbines. Henkels said she has been in contact with the state wildlife agency. Croteau asked if the issue is mainly migratory birds. Henkels said that would be one aspect, but also protecting habitat. She said it would be premature to talk about the wildlife impact.

Saelens said there are two stages of financing. There is the cost to find out what you want to do; then pooling enough resources to do the initial stage. He said, as Henkels had mentioned, Thompsons has been very helpful; and they will be able to get help from them. Saelens has talked to his supervising County Commissioner, Bill Hall, and they are interested in helping in the data gathering stage and make sure all the information will be out and on the table; good or bad.

Patrick said that he didn't have a problem with gathering data. He said that is probably one of the better sites on their list. It would have the least amount of impact. But he said the City would need to come up with standards or something. As far as he knows there is nothing on the books now, and we can't grant a tower without something to base it on. He said the Commission could give the City Council a heads up and ask that they give direction for the Commission to do something. He said he had no problem forwarding a recommendation to the City Council to allow this project, but the Commission will need some kind of direction of the kind of standards to apply here.

Henkels said this is very timely. It is a great time for the Commission and Newport to consider this. It might be a nice opportunity to get assistance. The first of June, the Governor's draft 10 Year Energy Plan is due out. One of the recommendations sent to the Governor's office from the task force was to concentrate on certain targeted communities. She envisions the central Oregon coast having a great chance to qualify. She said they are hoping that the Commission will be willing to support this. A lease of the property would have to be provided by the City to them.

Saelens commented that on the flyer, the Triton sonic wind profiler unit may look something like a hot tub waiting to fill with water; but it has drainage built in, and can even melt snow inside it. It is constructed to handle weather conditions.

Henkels asked if the Commission would be willing to recommend approval of the lease for placement of this device; but the Commissioners said they could only ask the Council to consider that.

MOTION was made by Commissioner Croteau to ask the City Council to consider leasing the property and setting up a test site for placement of the Triton Sonic Wind Profiler and give the Planning Commission direction on standards for erecting a tower and/or wind turbine late on. McIntyre commented that he sees this as being a lot more complicated than what is on the surface. Considerations will have to involve how to tie into public utilities once it is completed, who is going to handle all of the agreements, what it will look like, how many are built, etc. Those things are future things that need to be considered. At the present, the Commission can pass it on in a motion to the City Council to consider and give direction on what the Commission

should do with tower site height, etc. Commissioner Small seconded the motion. The motion carried unanimously in a voice vote.

G. Unfinished Business. No unfinished business to discuss.

H. Director's Comments. No director's comments.

I. Adjournment. Having no further business to discuss, the meeting adjourned at 8:27 p.m.

Respectfully submitted,

Wanda Haney

Wanda Haney
Executive Assistant